

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, :
: Plaintiff, :
: : CIVIL ACTION NO.
v. : : 1:17-CR-0224-AT-1
: :
ALLEN J. PENDERGRASS, :
: Defendant. :
: :
: :

ORDER

Defendant's Motion to Dismiss the Indictment for Speedy Trial Violation (Post Indictment, Doc 89) and Motion to Dismiss Indictment Pursuant to the Fifth and Sixth Amendment (Pre-Indictment) (Doc. 90) are currently before the Court. The Court has reviewed the briefing on these Motions. Based upon Defendant's raising specific relevant issues solely in his Reply briefs, the Court finds it essential and in the interest of justice to obtain the Government's response to these issues and other supplemental briefing prior to entering orders on these motions or granting the hearing requested.

1) The Government is **DIRECTED** to file a response to Defendant's newly asserted ground for its Motion to Dismiss Indictment for Speedy Trial Violation

(post indictment) raised for the first time in its Reply (Doc. 100) to the Government's Brief. (See Defendant's new ground and reliance on Gov. Motions at Docs. 71, 73.) The Government's response brief shall be filed no later than March 18, 2019.

2) The Government is **DIRECTED** to respond to Defendant's Reply in Support of Motion to Dismiss Indictment Pursuant to the Fifth And Sixth Amendment (pre-indictment), and in particular, Defendant's request for a hearing on the issue of communications between state and federal authorities with respect to the various investigations, indictments, and the Government's filing of its indictment more than 4 years after being apprised of the evidence and offense conduct underlying this case. (Doc. 101 at 4-8.) The response shall be filed no later than March 25, 2019. If Defendant seeks to file a reply to this response, his reply brief shall be due by April 1, 2019.

3) Counsel for the Government and Defendant are **DIRECTED** to confer regarding the discovery issues raised by Defendant no later than March 20, 2019. The Government is **DIRECTED** in its response filed on March 25, 2019 to advise the Court whether all requisite discovery relating to the topics identified in item (2) above has already been provided to Defense counsel or alternatively, if some

evidence that has been withheld as outside the current bounds of discovery, the scope of such evidence.

4) Finally, neither party addressed: (a) the timeliness of the Defendant's Motion for dismissal based on pre-indictment delay, pursuant to Federal Rule of Criminal Procedure 12(b)(3), subsequent to the Magistrate Judge's certification of this case for trial; or (b) whether and why any lack of timeliness should or should not be excused based upon change of counsel here, pursuant to Federal Rule of Criminal Procedure 12 (c)(3). **DEFENDANT** is **DIRECTED** to address this issue in a supplemental brief to be filed no later than March 18, 2019. The Government shall address this issue in its response brief filed on or before March 25, 2019. (See item #2 above.) The Defendant shall be authorized to file a reply brief, but such brief shall be filed no later than April 1, 2019.

The time from March 7, 2019, through April 1, 2019, shall be excluded from computation under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7)(A) and § 3161(h)(7)(B)(i) and thirty days from the date of final submission of all supplemental briefing required here, through May 1, 2019, consistent with §3161(h)(1)(H). The Court finds that the ends of justice are served by granting this continuance to ensure proper and complete briefing on Defendant's outstanding

motions and are consistent with both the best interest of the public and individual justice in this matter.

It is **SO ORDERED** this 11th day of March, 2019.



AMY TOTENBERG
UNITED STATES DISTRICT JUDGE